

(2) *Examples.* (i) *Information included.* Personally identifiable financial information includes:

(A) Information a consumer provides to a bank on an application to obtain a loan, credit card, or other financial product or service;

(B) Account balance information, payment history, overdraft history, and credit or debit card purchase information;

(C) The fact that an individual is or has been one of the bank's customers or has obtained a financial product or service from the bank;

(D) Any information about the bank's consumer if it is disclosed in a manner that indicates that the individual is or has been the bank's consumer;

(E) Any information that a consumer provides to a bank or that the bank or its agent otherwise obtains in connection with collecting on a loan or servicing a loan;

(F) Any information the bank collects through an Internet "cookie" (an information collecting device from a web server); and

(G) Information from a consumer report.

(ii) *Information not included.* Personally identifiable financial information does not include:

(A) A list of names and addresses of customers of an entity that is not a financial institution; and

(B) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

(p)(1) *Publicly available information* means any information that a bank has a reasonable basis to believe is lawfully made available to the general public from:

(i) Federal, State, or local government records;

(ii) Widely distributed media; or

(iii) Disclosures to the general public that are required to be made by Federal, State, or local law.

(2) *Reasonable basis.* A bank has a reasonable basis to believe that information is lawfully made available to the general public if the bank has taken steps to determine:

(i) That the information is of the type that is available to the general public; and

(ii) Whether an individual can direct that the information not be made available to the general public and, if so, that the bank's consumer has not done so.

(3) *Examples.* (i) *Government records.* Publicly available information in government records includes information in government real estate records and security interest filings.

(ii) *Widely distributed media.* Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper, or a web site that is available to the general public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

(iii) *Reasonable basis.* (A) A bank has a reasonable basis to believe that mortgage information is lawfully made available to the general public if the bank has determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

(B) A bank has a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if the bank has located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.

Subpart A—Privacy and Opt Out Notices

§ 40.4 Initial privacy notice to consumers required.

(a) *Initial notice requirement.* A bank must provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to:

(1) *Customer.* An individual who becomes the bank's customer, not later than when the bank establishes a customer relationship, except as provided in paragraph (e) of this section; and

(2) *Consumer.* A consumer, before the bank discloses any nonpublic personal information about the consumer to any

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nonaffiliated third party, if the bank makes such a disclosure other than as authorized by §§ 40.14 and 40.15.

(b) *When initial notice to a consumer is not required.* A bank is not required to provide an initial notice to a consumer under paragraph (a) of this section if:

(1) The bank does not disclose any nonpublic personal information about the consumer to any nonaffiliated third party, other than as authorized by §§ 40.14 and 40.15; and

(2) The bank does not have a customer relationship with the consumer.

(c) *When the bank establishes a customer relationship—(1) General rule.* A bank establishes a customer relationship when it and the consumer enter into a continuing relationship.

(2) *Special rule for loans.* A bank establishes a customer relationship with a consumer when the bank originates a loan to the consumer for personal, family, or household purposes. If the bank subsequently transfers the servicing rights to that loan to another financial institution, the customer relationship transfers with the servicing rights.

(3)(i) *Examples of establishing customer relationship.* A bank establishes a customer relationship when the consumer:

(A) Opens a credit card account with the bank;

(B) Executes the contract to open a deposit account with the bank, obtains credit from the bank, or purchases insurance from the bank;

(C) Agrees to obtain financial, economic, or investment advisory services from the bank for a fee; or

(D) Becomes the bank's client for the purpose of the bank's providing credit counseling or tax preparation services.

(ii) *Examples of loan rule.* A bank establishes a customer relationship with a consumer who obtains a loan for personal, family, or household purposes when the bank:

(A) Originates the loan to the consumer; or

(B) Purchases the servicing rights to the consumer's loan.

(d) *Existing customers.* When an existing customer obtains a new financial product or service from a bank that is to be used primarily for personal, family, or household purposes, the bank satisfies the initial notice require-

ments of paragraph (a) of this section as follows:

(1) The bank may provide a revised privacy notice, under § 40.8, that covers the customer's new financial product or service; or

(2) If the initial, revised, or annual notice that the bank most recently provided to that customer was accurate with respect to the new financial product or service, the bank does not need to provide a new privacy notice under paragraph (a) of this section.

(e) *Exceptions to allow subsequent delivery of notice.* (1) A bank may provide the initial notice required by paragraph (a)(1) of this section within a reasonable time after the bank establishes a customer relationship if:

(i) Establishing the customer relationship is not at the customer's election; or

(ii) Providing notice not later than when the bank establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

(2) *Examples of exceptions.* (i) *Not at customer's election.* Establishing a customer relationship is not at the customer's election if a bank acquires a customer's deposit liability or the servicing rights to a customer's loan from another financial institution and the customer does not have a choice about the bank's acquisition.

(ii) *Substantial delay of customer's transaction.* Providing notice not later than when a bank establishes a customer relationship would substantially delay the customer's transaction when:

(A) The bank and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the financial product or service; or

(B) The bank establishes a customer relationship with an individual under a program authorized by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*) or similar student loan programs where loan proceeds are disbursed promptly without prior communication between the bank and the customer.

(iii) *No substantial delay of customer's transaction.* Providing notice not later

than when a bank establishes a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at the bank's office or through other means by which the customer may view the notice, such as on a web site.

(f) *Delivery.* When a bank is required to deliver an initial privacy notice by this section, the bank must deliver it according to § 40.9. If the bank uses a short-form initial notice for non-customers according to § 40.6(d), the bank may deliver its privacy notice according to § 40.6(d)(3).

§ 40.5 Annual privacy notice to customers required.

(a)(1) *General rule.* A bank must provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually during the continuation of the customer relationship. *Annually* means at least once in any period of 12 consecutive months during which that relationship exists. A bank may define the 12-consecutive-month period, but the bank must apply it to the customer on a consistent basis.

(2) *Example.* A bank provides a notice annually if it defines the 12-consecutive-month period as a calendar year and provides the annual notice to the customer once in each calendar year following the calendar year in which the bank provided the initial notice. For example, if a customer opens an account on any day of year 1, the bank must provide an annual notice to that customer by December 31 of year 2.

(b)(1) *Termination of customer relationship.* A bank is not required to provide an annual notice to a former customer.

(2) *Examples.* A bank's customer becomes a former customer when:

(i) In the case of a deposit account, the account is inactive under the bank's policies;

(ii) In the case of a closed-end loan, the customer pays the loan in full, the bank charges off the loan, or the bank sells the loan without retaining servicing rights;

(iii) In the case of a credit card relationship or other open-end credit relationship, the bank no longer provides any statements or notices to the cus-

tomers concerning that relationship or the bank sells the credit card receivables without retaining servicing rights; or

(iv) The bank has not communicated with the customer about the relationship for a period of 12 consecutive months, other than to provide annual privacy notices or promotional material.

(c) *Special rule for loans.* If a bank does not have a customer relationship with a consumer under the special rule for loans in § 40.4(c)(2), then the bank need not provide an annual notice to that consumer under this section.

(d) *Delivery.* When a bank is required to deliver an annual privacy notice by this section, the bank must deliver it according to § 40.9.

§ 40.6 Information to be included in privacy notices.

(a) *General rule.* The initial, annual, and revised privacy notices that a bank provides under §§ 40.4, 40.5, and 40.8 must include each of the following items of information, in addition to any other information the bank wishes to provide, that applies to the bank and to the consumers to whom the bank sends its privacy notice:

(1) The categories of nonpublic personal information that the bank collects;

(2) The categories of nonpublic personal information that the bank discloses;

(3) The categories of affiliates and nonaffiliated third parties to whom the bank discloses nonpublic personal information, other than those parties to whom the bank discloses information under §§ 40.14 and 40.15;

(4) The categories of nonpublic personal information about the bank's former customers that the bank discloses and the categories of affiliates and nonaffiliated third parties to whom the bank discloses nonpublic personal information about the bank's former customers, other than those parties to whom the bank discloses information under §§ 40.14 and 40.15;

(5) If a bank discloses nonpublic personal information to a nonaffiliated third party under § 40.13 (and no other exception in §§ 40.14 or 40.15 applies to that disclosure), a separate statement